

No

21791

No. 3180

2005

United States
COURT OF APPEALS

for the Ninth Circuit

v.3505

LEO L. PHILLIPS,

P. R. ENLOE,

v.

*See also
Vol. 3403*

Plaintiff,

Appellant,

FLOYD OSBORNE, HARLEY RAY,
R. C. MacDONALD, E. A. REED, ARCHIE
ANDERSON, JAMES V. NEUBAUER, JOHN DOE,
RICHARD ROE and others,

Defendants-Appellees.

*On Appeal from the United States District Court
for the Western District of Washington,
Southern Division*

BRIEF OF APPELLANT P. R. ENLOE

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LEO L. PHILLIPS,

Plaintiff,

P. R. ENLOE,

Appellant,

v.

FLOYD OSBORNE, HARLEY RAY,
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JURISDICTION

Appellant P. R. Enloe is unable to advise this Court of the basis upon which the United States District Court for the Western District of Washington, Southern Division, granted an injunction to enjoin this appellant, who was not a party to any proceed-

ings before that court, from continuing with a suit in the Superior Court of Cowlitz County, Washington.

This Court has jurisdiction of this appeal from the order of permanent injunction under 28 U.S.C. 11.

STATEMENT OF THE CASE

In *Phillips v. Osborne*, 403 F.2d 826 (9th Cir., 1968), this Court held that Leo Phillips had no standing in Federal Court under the Landrum-Griffin Act to sue for the recovery of certain funds transferred from a local union. P. R. Enloe then sued in state court for the recovery of same funds under the common law of contracts of the State of Washington. The Federal Court enjoined Enloe from continuing with the state court suit. This appeal seeks to vacate the injunction because the earlier case was decided on the issue of the standing of the plaintiff and never reached the merits of the ownership of the local union funds.

STATEMENT OF FACTS

On February 24, 1964, Local 580 was affiliated with the International Brotherhood of Pulp, Sulphite & Paper Mill Workers, AFL-CIO, hereinafter called International, and represented the employees of the Weyerhaeuser Pulp Mill in Longview, Washington (Finding of Fact 1). The Bylaws of the local union provided:

“Disbursement of Funds. Local funds may be disbursed only by first being authorized by the members voting at a regular meeting or at a spe-

cial meeting. All checks are to be signed by the treasurer and co-signed by the president or vice-president." (Art XV, Ex. 2).

On September 24, 1964, the defendants, five of the officers of the local, transferred \$40,000 of the assets of the local out of the control of the local into an escrow. This action had not been authorized by the members at a regular or special meeting (Finding of Fact 3).

On September 26, 1964, Local 580 passed two motions:

1. "This local does not ratify the action taken by the officers without the knowledge of the local and return the money." (Finding of Fact 4)

2. "That all money of Local 580, with the exception of \$500.00 for operating expenses, be divided equally among the paid up members of Local 580 as of 'today' and checks be written immediately." (Finding of Fact 4).

The defendants refused to return the money to the local. Later that morning, Local 580 disaffiliated from the International and affiliated with a new union, the Association of Western Pulp and Paper Workers (Finding of Fact 5).

Leo Phillips, a supporter of the AWPPW, brought suit in the United States District Court for the Western District of Washington, Southern Division, on October 13, 1964 to require that the decisions of the local union regarding funds be carried out. The District Court dismissed the complaint of Phillips, concluding that:

“In the particular circumstances of this case, a reasonable time within which Plaintiff was required to file his action expired upon the conclusion of the disaffiliation meeting on September 26, 1964. Since this action was not filed until October 13, 1964, it was not filed within a reasonable time as required by Section 501 of the Act.” (Conclusion of Law 11).

“While Phillips was a member of International Local 580 at the first meeting on September 26, 1964, by reason of his actions during the following meetings that day, he was not a member of the International Local 580 within the meaning of Section 501(b) at the end of that day. Hence, *Plaintiff Phillips has no standing to bring this suit.*” (Emphasis added). (Conclusion of Law 13).

This Court then affirmed the District Court, stating:

1. “In the light of Phillips’ relation with Western, other considerations lead us to agree that he, at the time of filing his suit, was not a ‘member’ of International within the meaning of Section 501(b).” *Phillips v. Osborne*, 403 F.2d 826, 831 (9th Cir., 1968).

2. “In requesting direct relief for certain union members only and not ‘for the benefit of the labor organization,’ Phillips disqualified himself from proceeding under Section 501.” (403 F.2d at 832).

3. “Hence, statutes extending federal jurisdiction, such as Section 501(b), are narrowly construed so as not to reach beyond the limits in-

tended by Congress. [citations] . . . *Such a construction is especially appropriate when, as here, the statute generally concerns rights subject to full and satisfactory vindication in state courts.*" (Emphasis added). (403 F.2d at 828).

4. *"The appellant has failed to explain why a state court may not satisfactorily determine the ownership of the funds involved in the present controversy."* (Emphasis added). (403 F.2d at 828).

Following the suggestion of this Court, P. R. Enloe then filed suit in the Superior Court of Cowlitz County against the same defendants sued in the Federal Court case. Enloe's action was based on a violation by the defendants of their contract with the other union members under the common law of the State of Washington by transferring the \$40,000 in violation of the Bylaws of the local union (R. p. 4). Defendants brought a supplemental motion and affidavit in the Federal Court seeking to enjoin Enloe, *who was not a party to the Federal action*, for seeking relief in the state court (R. p. 1).

On February 10, 1969 the District Court entered an order of permanent injunction against Enloe and this appeal followed (R. p. 25).

SPECIFICATION OF ERROR

The Court erred in entering an order of permanent injunction preventing Enloe from seeking relief in state Court.

QUESTION PRESENTED

Does the decision of this Court that Phillips had no standing to bring a suit under the Landrum-Griffin Act to recover certain funds prevent Enloe from seeking to recover the same funds under the common law of contracts of the State of Washington?

SUMMARY OF ARGUMENT

This Court has ruled that Phillips was not a proper plaintiff under the Landrum-Griffin Act. The opinion of this Court stated "The appellant has failed to explain why a state court may not satisfactorily determine the ownership of the funds involved in the present controversy."

This Court thereby invited the filing of a case in state court "to determine the ownership of the funds involved in the present controversy." By enjoining Enloe from seeking relief in state court, the District Court confused a lack of standing of Phillips with a decision on the merits of the ownership of the funds.

ARGUMENT

The Court Erred in Entering an Order of Permanent Injunction Against Enloe.

The Landrum-Griffin Act is designed to add to the rights available to union members and not to replace any rights available under state law. 29 U.S.C. 413. This Court has previously held that Leo Phillips

was the wrong plaintiff to bring a suit under the Landrum-Griffin Act to compel defendants to return to the local union the \$40,000 that they unquestionably transferred contrary to local union bylaws. The decision of this Court means that neither Phillips nor anyone else who supported the disaffiliation of Local 580 from the IBPSPMW on September 26, 1964 can bring suit under the Landrum-Griffin Act.

Neither the District Court nor this Court reached any decision determining the ownership of the funds involved in the controversy. It remains to be determined whether the defendants had a right to transfer the \$40,000 in violation of the local union Bylaws. If their action was wrongful it remains to be determined whether the motions of the local union concerning the disposition of this money can be carried out. These are the merits of the controversy which were not reached in Federal Court since the plaintiff Leo Phillips in the Federal case had no standing. The question of the ownership of the funds can and should be reached in the pending case in the Superior Court of Cowlitz County as soon as this Court removes the injunction which prevents that case from proceeding.

In addition to the \$40,000 involved in this case Local 580 IBPSPMW had certain office equipment and furniture. In the case of *International Brotherhood of Pulp, Sulphite and Paper Mill Workers, AFL-CIO, et al v. Delaney, et al*, — W —, 442 P2d 250 (1968), the International Union and Local 580 IBPSPMW sued to recover the office equipment and furni-

ture from the disaffiliating local 580 and also to forfeit the assets of the disaffiliating local 153, which represented the employees of the Longview Fibre mill in Longview, Washington. The Supreme Court of the State of Washington, by a unanimous en banc decision, dismissed that case. The result is that the office equipment and furniture of Local 580 are now in the hands of Local 580 in its new affiliation with AWP-PW. Meanwhile, the \$40,000 from the treasury of Local 580 is still in the hands of five individuals who transferred it contrary to the local union Bylaws almost five years ago.

Appellant Enloe is not seeking to relitigate any issue that was decided in the case of *Phillips v. Osborne*. He only asks that the specific language of this Court in its earlier opinion be carried out so that, as suggested by this Court, a state court may "satisfactorily determine the ownership of the funds involved in the present controversy."

CONCLUSION

The order of permanent injunction preventing P. R. Enloe from seeking relief in the Superior Court of Cowlitz County, Washington, should be vacated.

Respectfully submitted,

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